

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

In re:

CLADDAGH DEVELOPMENT  
GROUP, LLC, et. al.

Debtors

Case Nos. 06-33124; 07-30312,  
07-30313, 07-30315, 07-30113,  
07-30114, 07-30115, 07-30117,  
07-30118, 07-30119, 07-30120,  
07-30124, 07-30125, 07-30126,  
07-30127, 07-30128, 07-30129,  
07-30130, 07-30131, 07-30133,  
07-30134

(Jointly Administered  
under case no 06-33124)  
Chapter 11 Proceeding  
(Judge Walter)

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**TRUSTEE'S MOTION FOR (1) APPROVAL OF PURCHASER'S OFFER TO  
PURCHASE ASSETS AS STALKING HORSE BID; (2) APPROVAL OF  
BREAK-UP FEE TO STALKING HORSE BIDDER; (3) SCHEDULING  
AUCTION FOR SALE OF ASSETS; (4) APPROVING BIDDING PROCEDURES  
FOR AUCTION INCLUDING SETTING OF INITIAL OVERBID AND  
SUBSEQUENT BIDDING INCREMENTS; (5) SCHEDULING HEARING ON  
APPROVAL OF SUCCESSFUL BIDDER AT THE AUCTION AND; (6)  
SETTING OBJECTION DEADLINE**

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Richard D. Nelson, Chapter 11 TRustee, respectfully requests that this Court enter an order, pursuant to sections 105(a), 363(b), (f) and (m), 365, 1107, and 1108 of title 11 of the Unites States Code (the "Bankruptcy Code") and Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") which (i) approves Purchaser's offer to purchase the Assets pursuant to the terms and conditions set forth herein as the stalking-horse bid at an auction to be held by the Sellers, (ii) approves the Break-Up Fee and the timing and manner of payment of the Break-Up Fee to Purchaser as set forth herein; (iii) schedules an auction for the sale of the Assets to take place no later

than January 16, 2008 at which only Qualified Bidders may bid; (iv) approves bidding procedures including (a) establishes the Initial Overbid Amount for any other bids to be made at the auction, and (b) establishes bidding increments of at least \$50,000 over the previous bid; (v) schedules the Sale Hearing; and (vi) sets the Objection Deadline for the Sale Motion. In support of this Motion, the Trustee respectfully states:

### **BACKGROUND**

1. On October 25, 2006, creditors The John F. Gallagher Company, Queensgate Food Group LLC, Economy Linen Inc.<sup>1</sup>, and Great Lakes Concrete Restoration, Inc. (collectively the “Petitioning Creditors”) filed an involuntary Chapter 11 Petition against Debtor. The Petitioning Creditors filed an Emergency Motion for Appointment of Interim Chapter 11 Trustee on October 27, 2006 (Doc. 4.)

2. The United States Trustee subsequently filed a Motion to Appoint Trustee, requesting the immediate appointment of Richard D. Nelson as Chapter 11 Trustee (Doc. 74).

3. The Estate includes a chain of seventeen (17) “Irish Concept” restaurants, each operated by an affiliate of the Debtor CDG, LLC, and operating under the name “Claddagh Irish Pubs”. On January 10 and 11, 2007, the Trustee filed Chapter 11 bankruptcies for the affiliates. The affiliated debtors are collectively referred to as “Debtors.”

4. The Trustee continues to operate the restaurants as going concerns as well as the administrative operation of this Chapter 11 case. To

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<sup>1</sup> Economy Linen Inc. has since withdrawn as petitioning creditor (Doc. 16).

date, the Trustee has assumed thirteen leases, and rejected two. One lease is on extension..

5. The Trustee received and accepted a purchase offer (the “Stalking Horse Offer”) from CDG Acquisition LLC (“Purchaser”) to purchase the Debtors’ assets for Thirty-One Million Dollars (\$31,000,000.00), consisting of Ten Million Dollars (\$10,000,000.00) in cash (the “Cash Purchase Price”), plus the assumption of certain Assumed Debt and Assumed Liabilities as defined the Asset Purchase Agreement entered into between the Trustee and Purchaser (the “Stalking Horse APA”). A copy of the Stalking Horse APA is attached to this Motion. A blank asset purchase agreement is available upon request for the benefit of interested bidders (the “Asset Purchase Agreement”).

6. The Stalking Horse Offer contemplates an Auction for sale of the assets, and is subject to higher and better bids.<sup>2</sup>

7. The Trustee, by this Motion, seeks entry of an order which (i) approves Purchaser’s offer to purchase the Assets pursuant to the terms and conditions set forth herein as the stalking-horse bid at an auction to be held by the Sellers, (ii) approves the Break-Up Fee and the timing and manner of payment of the Break-Up Fee to Purchaser as set forth herein; (iii) schedules an auction for the sale of the Assets to take place no later than January 16, 2008 at which only Qualified Bidders may bid; (iv) approves bidding procedures including (a) establishes the Initial Overbid Amount for any other bids to be made at the

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<sup>2</sup> Qualified Bidders need not assume the liabilities that Purchaser contemplates assuming in its APA. However, the value to the estate of Purchaser’s assumption of the Assumed Debt and the Assumed Liabilities will be considered in determining whether any other bid is a higher and better bid.

auction, and (b) establishing bid increments of at least \$50,000 over the previous bid; (v) schedules the Sale Hearing and (vi) sets the Objection Deadline for the Sale Motion.

### **JURISDICTION**

8. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This Proceeding is a core proceeding pursuant to 29 U.S.C. § 157(b)(2)(A) and (N). Venue is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

9. The statutory predicates for the relief sought herein are sections 105(a), 363(b), (f) and (m), 365, 503, 507(b), 364(c)(1) and (d), 1107 and 1108 of the Bankruptcy Code and Rules 2002, 6004, 6006, 9007, and 9014 of the Bankruptcy Rules.

### **PROPOSED BIDDING PROCEDURES AND BIDDING**

10. The Trustee proposes that this Court approve certain procedures for conducting the sale of Debtors' Assets, and which will apply in the event that parties other than Purchaser desire to submit a competing bid at the Auction for the purchase of Debtors' assets, which are designed to maximize the value of Debtors' assets (the "Bidding Procedures").

11. The Trustee proposes the following Bidding Procedures:

a. **Confidentiality Agreement:** Potential bidders must have signed a confidentiality agreement before performing any due diligence or submitting a competing bid.

b. **Deadline:** Potential bidders shall submit their offers to purchase Debtors' assets to (i) counsel for the Trustee, Richard D. Nelson, Esq., Donald J. Rafferty Esq., and Monica V. Kindt, Esq., Cohen, Todd, Kite & Stanford, LLC, 250 East Fifth St., Suite 1200, Cincinnati, Ohio 45202, (ii) counsel for the Unsecured Creditors Committee ("UCC"), Douglas Lutz, Esq., Frost Brown Todd LLC, 2200 PNC Center, 201 East Fifth St., Cincinnati, Ohio 45202, (iii) counsel for Purchaser, Timothy Hurley, Esq., Taft Stettinius & Hollister LLP, 425 Walnut St., Suite 1800, Cincinnati, Ohio 45202, and (iv) the Office of the United States Trustee, Attn: Maryanne Wilsbacher, 170 North High St., Suite 200, Columbus, OH 43215, ***no later than 5pm (EST) on January 11, 2008***. Any party failing to submit a bid by the deadline set herein, ***shall not be permitted to participate in any auction conducted by the Court***.

c. **Qualified Bidders / Bid Requirements:**

(i) Any bid for the Assets must:

A. be in writing;

B. be received by the Deadline and served on the parties

as described in detail in Paragraph 11(b);

C. be at least two hundred and fifty thousand dollars (\$250,000.00) higher than Cash Purchase Price (the "Initial Overbid"), that is, at least \$10,250,000;

D. be accompanied by a clean and executed asset purchase agreement (the "Modified Purchase Agreement") and a marked Modified Purchase Agreement reflecting any variations from the Purchase

Agreement; provided however that the only permitted variations from the Purchase Agreement shall be for (a) identification of the assets being purchased; (b) the cash price offered, (c) identification of the assigned leases and contracts, and (d) identification of the liabilities, if any, being assumed;

E. be accompanied by a cash deposit (i.e., bank or certified check payable to Richard D. Nelson, Chapter 11 Trustee) equal to at least ten percent (10%) of the proposed purchase price (the "Earnest Money Deposit"), which shall be delivered to Cohen, Todd, Kite & Stanford, LLC, 250 East Fifth St., Suite 1200, Cincinnati, Ohio 45202 with the bidder's written bid;

F. identify the assets the bidder offers to purchase and the liabilities the bidder proposes to assume at the purchase price and upon the terms and conditions set forth in the Modified Purchase Agreement;

G. not contain any contingencies relating to due diligence, financing, or the assumption and assignment of any contracts;

H. demonstrate that the bidder is able to consummate the transaction (financially and otherwise) on the terms of the Modified Purchase Agreement;

I. include evidence of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution and delivery of the Modified Purchase Agreement;

J. identify with particularity each and every executory contract or assumed lease, the assignment of which is a condition to closing;

K. identify whether the bidder intends to continue to operate the Debtors as Claddagh Pubs and Restaurants;

L. be for substantially all of the assets.

(ii) A Qualified Bid does not need to include the assumption of the Assumed Debt and Assumed Liabilities listed in the Stalking Horse APA.

(iii) A bid meeting the foregoing requirements of paragraph 11(c) shall constitute a "Qualified Bid." The Trustee and Counsel for the Unsecured Creditors Committee shall also decide whether any Qualified Bid made at the Auction is the highest and best bid, taking into account all aspects and value of the Stalking Horse Bid and any Qualified Bids.

**d. Auction / Participation / Bidding:**

(i) If the Trustee receives one or more Qualified Bids, an Auction shall be held at 10:00 a.m., on January 16, 2007 at the United States Bankruptcy Court for the Southern District of Ohio, Dayton Division, 120 West Third Street, Dayton, OH 45402.

(ii) Only Qualified Bidders shall be permitted to participate at the Auction.

(iii) All Qualified Bidders shall appear at the Auction in person or through a duly authorized representative who shall appear in person.

(iv) After the Initial Overbid, if any, made at the Auction, all subsequent bids shall be in increments of at least \$50,000.00 over the amount of the previous bid.

(v) Bidding at the Auction shall continue until such time as the Trustee, in consultation with Counsel for the Unsecured Creditors Committee, determines in his business judgment that the highest and best offer for the Debtors' assets has been received (the "Successful Bid" and the party that submitted such bid, the "Successful Bidder"). The Trustee shall seek approval from the Court of the Successful Bid at the Sale Hearing, as described in section (g) below, subject to objections, if any, that may be raised by a party-in-interest. The Trustee will be deemed to have accepted a Qualified Bid only when such Qualified Bid has been approved by this Court.

e. **Back-up Bidder:** The Trustee shall have the right to select any bidder at the Auction, other than Purchaser, whom the Trustee, in consultation with Counsel for the Unsecured Creditors Committee determines has submitted the second highest bid to serve as the back-up bidder (the "Back-Up Bidder") and to retain such bid (the "Back-Up Bid") in place for forty-five (45) days following entry of an order approving the Sale, or for such longer period as mutually agreed to by the parties. At the Sale Hearing, the Trustee will request that this Court confirm the Back-Up Bid to eliminate the need for an additional hearing in case the Successful Bidder fails to close. After expiration of the forty five (45) days following entry of an order approving the Sale, unless such time is otherwise extended by the parties, and assuming the Trustee has not notified the Back Up Bidder that the Back-Up Bid has been selected as the Successful Bid, the Back-Up Bid shall be deemed null and void and of no further effect.



f. **Earnest Money Deposit:** All Earnest Money Deposits shall be held by the Trustee in an interest-bearing escrow account. The Earnest Money Deposit of the Successful Bidder shall be applied to the cash component of such bidder's purchase price. All Earnest Money Deposits, with the exception of the Back-Up Bidder's Earnest Money Deposit, shall be returned to each bidder not selected by the Trustee as the Successful Bidder within three (3) business days following the conclusion of the Sale Hearing. The Earnest Money Deposit of the Back-Up Bidder shall remain in escrow for forty-five (45) days following entry of an order approving the Sale. If the Successful Bidder is unable to close for any reason other than a material breach as described in the Asset Purchase Agreement, the Trustee will release the Earnest Money Deposit to the Successful Bidder within two (2) business days after notice of termination of such Successful Bidder's asset purchase agreement. If the Successful Bidder is unable to close for any reason that constitutes a material breach as described in the Asset Purchase Agreement, the Trustee and the Estate shall retain the Earnest Money Deposit.

g. **Sale Hearing:** A Sale Hearing shall be held at 2:00 p.m. on January 16, 2008 at the United States Bankruptcy Court for the Southern District of Ohio, Dayton Division, 120 West Third Street, Dayton, OH 45402, at which the Trustee will seek the entry of an order approving and authorizing the Sale to the Successful Bidder on terms and conditions consistent with the asset purchase agreement submitted by such Successful Bidder.

h. **Breakup Fee:** Pursuant to the terms of the Stalking Horse APA, if someone other than the Purchaser ultimately purchases the assets that are the subject of the APA, the Trustee has agreed to pay to Purchaser Two Hundred Thousand Dollars (\$200,000.00) (the "Breakup Fee").

**OBJECTION DEADLINE**

12. The Trustee requests that the Court set a deadline for filing objections to the Sale Motion of January 11, 2008 at 5 p.m. (EST).

**NOTICE OF SALE MOTION, BID PROCEDURES, HEARING DATES, AND BID AND OBJECTION DEADLINES**

13. The affiliated Debtors have in excess of 500 creditors. Service of the Sale Motion and the Bid Procedures on all creditors would be overly burdensome to the Trustee and the Estate. Instead, the Trustee requests that he be allowed to serve a Notice to all creditors and parties in interest, substantially in the form attached hereto as Exhibit B, (a) informing them of the filing of the Sale Motion, (b) setting forth the date of the Auction and the Sale Hearing (c) stating that a copy of the Sale Motion will be available upon request, (d) describing the property to be sold; (e) providing contact information for the submission of competing bids; and (f) providing the Objection Deadline.

13. The Trustee separately shortened the objection time for this Motion to December 20, 2007. It is imperative that the Order Approving Bid Procedures be expeditiously entered so that the Trustee can serve the proposed Notice to all parties.

14. This Motion has been served on all parties who have expressed and interest in purchasing Estate assets, counsel for the 20 largest Unsecured

Creditors, the Office of the United States Trustee, the Debtors' Landlords, and those parties who have filed a Notice of Appearance in this case. In light of the relief requested, the Trustee contends that no further notice is required. The Trustee will provide copies of the Motion to those parties who request it.

**WHEREFORE**, the Trustee respectfully requests the Court enter an Order which (i) approves Purchaser's offer to purchase the Assets pursuant to the terms and conditions set forth herein as the stalking-horse bid at an auction to be held by the Sellers, (ii) approves the Break-Up Fee and the timing and manner of payment of the Break-Up Fee to Purchaser as set forth herein; (iii) schedules an auction for the sale of the Assets to take place no later than January 16, 2008 at which only Qualified Bidders may bid; (iv) approves bidding procedures including (a) establishing the Initial Overbid Amount for any other bids to be made at the auction, and (b) establishing bidding increments of at least \$50,000 over the previous bid; (v) schedules the Sale Hearing; (vi) sets the Objection Deadline for the Sale Motion; and (vi) grants to the Trustee such other and further relief as may be just and proper.

Respectfully submitted,

/s/ Monica V. Kindt

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Donald J. Rafferty (Ohio Reg #0042614)  
Monica V. Kindt (Ohio Reg. #0073085)  
Cohen, Todd, Kite & Stanford, LLC  
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Cincinnati, Ohio 45202-4157  
Attorneys for Chapter 11 Trustee

466902.3

## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was electronically filed on December 13, 2007. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. A copy of the foregoing was also served this December 13, 2007, via ordinary mail upon the following

### **ECF Notice**

Asst US Trustee (Day)	<a href="mailto:USTPRegion09.CB.ECF@usdoj.gov">USTPRegion09.CB.ECF@usdoj.gov</a>
Todd Bobka	<a href="mailto:bankruptcy@weinerlaw.com">bankruptcy@weinerlaw.com</a>
Sylvie J. Derrien	<a href="mailto:derrien@coollaw.com">derrien@coollaw.com</a>
Thomas R. Noland	<a href="mailto:notices@dayton.statmanharris.com">notices@dayton.statmanharris.com</a> ; <a href="mailto:tnoland@dayton.statmanharris.com">tnoland@dayton.statmanharris.com</a>
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Aaron Mockridge  
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